

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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January 7, 2014

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus:

I am writing to request that you postpone consideration of H.R. 2279, which is scheduled to be debated on the House floor later this week.

Immediately prior to full Committee consideration of this legislation, the Department of Defense and the Department of Justice raised serious concerns about its effects. During Committee consideration, I requested that you meet with representatives of these Departments to understand their concerns, and I pledged to work with you to address those concerns and to craft a sound public policy that could become law.

At the full Committee markup in June, you said you would meet with the Defense and Justice Departments. Although six months have passed since then, you still have not done so. The result is that no attempt has been made to improve this unworkable legislation.

On June 17, 2013, two days before the full Committee considered this legislation, the Committee staff met with the Department of Defense and the Department of Justice on a bipartisan basis. Amazingly, even though this bill imposes new obligations on the Defense Department, the majority had never consulted with them during its development.

The DOD career staff who work every day to clean up Superfund sites at federal facilities did not understand what problem the bill was attempting to solve. However, they were very clear on the effects of the bill. According to the Department lawyers, the bill would disrupt the national priority scheme in which the most contaminated federal sites are cleaned up first. It would increase litigation and increase the likelihood of conflict between the states and federal facilities. The bill would delay cleanups by redirecting funds and creating procedural hurdles, waste limited resources that should be going to cleanups, hold federal facilities to different

cleanup and procedural requirements than private parties, and expose federal employees to sanctions for doing their jobs.

I was hopeful at that time that we would be able to work together on legislation. It is important to do all we can to improve the functioning of government. If we have an opportunity to improve the process and pace of cleanups, we should work together to seize that opportunity. That is why I asked you during the Committee markup to work with the Democrats in crafting a policy that could win bipartisan support, stating:

The Department of Defense and the Department of Justice offered to work with this committee on legislation if we could identify the objective we are trying to achieve. I think we should take them up on that offer rather than voting to report a bill out that is not ready, in my view, for consideration. ... we still have such important questions about what this bill would do, and it seems like we haven't even taken the basic steps of consulting with the lawyers for the departments of the federal government that are going to be affected. That is just a basic thing to do before we pass a bill. I would like to know more about how this bill will work, what we are actually trying to accomplish, whether it is necessary, or whether we are going to do a lot of harm. ... In fact, if the author of the bill wanted to withdraw it and continue to work on it with us, we would be happy to do that.¹

When you made it clear you intended to move forward with the legislation, I requested that at least you should meet with the Department experts to hear their concerns. You agreed, as this excerpt from the transcript shows:

Mr. Waxman. I expect this bill will get a majority support to move forward. I would urge you to meet with the lawyers from the Department of Justice and DOD to hear what they have to say. And I just want to also express to you, as this bill moves further along, I welcome the opportunity to try to make a bill work the way we both want it to work. So I offer my cooperation to you. I am just not ready to support it.

Mr. Shimkus. Yeah, and reclaiming my time, I appreciate that. And staff will help me arrange a time when I will meet with those attorneys as you suggest, Mr. Waxman. I would be happy to do that. And I will bring my counsel there. And if there is something we can do to perfect this as it moves forward, I would be happy to do that.²

¹ House Committee on Energy and Commerce, Markup of H.R. 2218, the Coal Residuals Reuse and Management Act of 2013; H.R. 2226, the Federal and State Partnership for Environmental Protection Act of 2013; H.R. 2279, the Reducing Excessive Deadline Obligations Act of 2013; and H.R. 2318, the Federal Facility Accountability Act, 113th Congress (June 19, 2013).

² *Id.*

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We had that exchange over six months ago, but no meeting with the Departments was ever scheduled. The result is that we have missed an important opportunity to address legitimate concerns and modify the legislation. That is why I am asking you to consider postponing floor consideration.

If you would delay floor consideration and engage relevant stakeholders, I'd be pleased to work with you to develop legislation that will improve the Superfund program and can become law.

Sincerely,

A handwritten signature in blue ink that reads "Henry A. Waxman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Henry A. Waxman
Ranking Member